

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, ADMINISTRATOR *et al.*, :
 :
Plaintiffs :
 :
VS. : C.A. NO.: 1:04-CV-312-L
 :
JEFFREY DERDERIAN *et al.*, :
 :
Defendants :

AFFIDAVIT OF JOHN M. HOFFMANN, Ph.D.,
IN SUPPORT OF RULE 12(b)(6) MOTIONS TO DISMISS
OF GENERAL FOAM CORPORATION, GFC FOAM, LLC, PMC, INC.,
PMC GLOBAL, INC., FOAMEX L.P., FOAMEX INTERNATIONAL, INC., AND
FMXI, INC.

John M. Hoffmann, being first duly sworn, states as follows:

1. I am a Fire Scientist and hold an undergraduate degree in Chemistry and a graduate degree (Ph.D.) in Weapons Systems Engineering with a specialty in Organic Chemistry. (A copy of my curriculum vitae is attached as Exhibit 1.) While on active duty with the United States Navy, I participated in the study and investigation of fires and explosions aboard naval ships and aircraft. Following retirement from the Navy, I directed the safety programs for the Parke-Davis Company, a division of Warner Lambert Company, which included extensive fire safety programs for the prevention of fires and protection from fires.

2. In 1985, I founded Safety Engineering Laboratories ("SEL") for the purpose of investigating and reconstructing fires, conducting fire tests on a wide array of materials/chemicals and providing expert testimony in matters related to LP and natural gas fires and explosions, chemical fires and explosions, plastics fires, flammable and combustible liquid fires, and industrial, commercial, and residential structural fires. Among the mass disaster fires I have investigated are the San Juan Dupont Plaza Hotel fire in Puerto Rico, the MGM Grand and Hilton Hotel fires in Nevada, the PEPCON ammonium perchlorate chemical plant explosion in Nevada, and the One Meridian Plaza fire in Pennsylvania.

3. From 1985 until 2000, I was the President of Safety Engineering Laboratories and am currently Chairman of the Board of Directors. I have worked for both plaintiffs and defendants and have testified in State and Federal District courts in more than 35 states, Puerto Rico, Canada, and South America. Safety Engineering Laboratories has conducted fire-related testing for major trade organizations such as the Consumer Electronics Association (CEA) and the Chemical Manufacturers Association

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(CMA). SEL also has conducted fire testing on a variety of consumer products, household chemicals, and materials capable of causing spontaneous ignition (combustion) for individual companies and in support of litigation.

4. SEL and I have been retained by counsel for defendants in the litigation styled above to investigate, examine and analyze the February 20, 2003 fire (the "Fire") at The Station nightclub (the "Nightclub").

- Commencing on or about April 2, 2003 and continuing until approximately May 6, 2003, SEL and I investigated and participated in the tagging and removal of over 700 artifacts from the fire scene.
- I have examined videotapes depicting how the Fire ignited and spread, and the Nightclub crowd's reaction to the Fire.
- I have reviewed and am familiar with statements made and conclusions drawn by the wide array of fact witnesses to the fire, local and state fire marshals, crowd consultants, ingress/egress experts, and other professional fire investigators who have commented in media reports since the date of the Fire regarding the building and its exits and construction, the fire and its origin, code violations and the nature in which the fire grew, developed and extinguished.
- I have reviewed Town of West Warwick Fire and Police Department documents pertaining to overcrowding problems at the nightclub, noise complaints, 2000-2002 building inspections, and reports, commentary and testimony relating to the Fire prepared by or on behalf of the National Institute of Standards and Technology and the National Fire Protection Association.

For these reasons, and based on my years of training, skill and experience, I have personal knowledge of the following facts and am competent to make this affidavit.

5. The Derderians claim to have purchased approximately 540 square feet of low density foam from American Foam Corporation ("American Foam"). American Foam has produced to the Rhode Island Attorney General a June 27, 2000 invoice along with (a) a General Foam Corporation Product Data Sheet for polyether foam designated 36000XXX, and (b) a GFC Material Safety Data Sheet for flexible polyurethane foam dated January 1997. Further, Margaret Hebner's affidavit in support of the Rule 12(b)(6) Motion to Dismiss by Defendants Foamex, LP, Foamex International, Inc. and FMXI, Inc. identified its product designated P120-34 as the non-flame retardant packing foam purchased on occasion by American Foam from Foamex after July 2001.

6. Polyurethane foam is used for hundreds of practical everyday purposes from carpet pads and seat cushions, to numerous applications in the automobile industry, to the shipping and packaging industry. Foam is well-regulated, yet none of the applications just referenced require foam to be flame retardant. GFC's and Foamex's sales documentation, which accompanied its products when shipped to its customers,

including American Foam, contained a warning about the flammability of polyurethane foam. GFC's documentation stated:

WARNING! POLYURETHANE FOAM IS FLAMMABLE.

IMPROPER HANDLING OF FLEXIBLE POLYURETHANE FOAM DURING STORAGE OR USE MAY PRESENT A RISK OF FIRE. DO NOT EXPOSE POLYURETHANE FOAM TO POTENTIAL SOURCES OF IGNITION SUCH WELDING, BURNING CIGARETTES, CONTACT WITH NAKED LIGHTS, OPEN FLAMES, SPACE HEATERS, OR UNCONTROLLED BURNING OPERATIONS. IN THE EVENT OF IGNITION, POLYURETHANE FOAM MAY BURN RAPIDLY.

PRECAUTIONS FOR STORAGE AND HANDLING:

USERS SHOULD TAKE APPROPRIATE PRECAUTIONS IN THE STORAGE AND HANDLING OF THIS MATERIAL AND FOLLOWING APPLICABLE LOCAL BUILDING CODES, FIRE ORDINANCES, AND INSURANCE REGULATIONS. MINIMUM PRECAUTIONS SHOULD INCLUDE PROVISION OF ADEQUATE AISLEWAYS, SPRINKLE HEAD CLEARANCE, AND AVAILABILITY OF APPROVED ABC DRY CHEMICAL EXTINGUISHERS. IN THE EVENT OF IGNITION, DOUSE FOAM WITH LARGE VOLUMES OF WATER AND REMOVE FROM BUILDING.

Foamex's sales documentation stated:

WARNING – IMPORTANT NOTICE

ALL POLYURETHANE FOAMS, INCLUDING COMBUSTION MODIFIED FOAMS, WILL BURN. DO NOT EXPOSE TO ANY FLAME SOURCE. ONCE IGNITED, THEY CAN PRODUCE RAPID FLAME SPREAD, INTENSE HEAT, DENSE SMOKE AND TOXIC GASES CAUSING DEATH. WARNINGS SHOULD BE GIVEN TO YOUR EMPLOYEES AND CUSTOMERS. TEST DATA DOES NOT NECESSARILY REFLECT A FOAM'S PERFORMANCE UNDER ACTUAL FIRE CONDITIONS.

7. On or about June 27, 2000, the Derderians installed foam on the walls and ceiling of the Nightclub. Subsequent inspections of the Nightclub by the Town of West Warwick Fire Department on November 21, 2000, November 10, 2001 and November 20, 2002 identified numerous building code violations including, among other things, fire extinguishers improperly placed, improperly tagged and in need of repair, exit doors in need of repair, emergency lights and exit signs not functioning or in need of bulbs, and broken panic hardware on exit doors. None of these post-June 27, 2000 inspections identified the readily apparent packing foam on the walls and ceiling of the Nightclub.

8. The Derderians' use of non-flame retardant flexible polyurethane foam such as GFC 36000XXX or Foamex P120-34 on the walls and ceilings of the Nightclub was illegal and violated **Rhode Island General Laws, Section 23-28.6-15** which states as follows: "(a) All combustible decorative and acoustical material including curtains, but not including floor coverings shall be rendered and maintained flame resistant in accordance with subsection (d). This regulation shall not be construed to prohibit the use of wall or ceiling coverings affixed directly to the wall or ceiling, which meet the

requirements of subsection (e). Furnishings or decorations of an explosive or highly flammable character shall not be used.”

9. The Station was licensed by the Town of West Warwick, RI as a nightclub, and the license specified an occupancy limit of 300 persons. On the night and at the time of the Fire, more than 300 persons occupied the Nightclub in violation of the Class C license and appropriate safety standards. But regardless of the limitation as to the posted occupancy guidelines, attendance at the time of the Fire exceeded ordinary safety standards for emergency egress when considering the use of alcohol, lack of sprinklers, inadequate fire exits, and overcrowding.

10. **Rhode Island General Laws, Section 23-28.11** requires that anyone using pyrotechnics must possess and display permits issued by the West Warwick Fire Department prior to using pyrotechnics. There is no evidence that the Nightclub’s owners, agents or employees, or the Great White band complied with this law prior to using pyrotechnics at the Nightclub on February 20, 2003. Neither is there evidence that the Nightclub’s owners, agents or employees ever received or applied for a permit from the West Warwick Fire Department to possess or use pyrotechnics inside the Nightclub on February 20, 2003 as required by **Rhode Island General Laws 23-28.11-3**.

11. **Rhode Island General Laws 23-28.11-4** requires every person desiring to possess or display commercial fireworks and/or pyrotechnics to obtain a certificate of competency that attests to the applicant’s experience and ability to conduct commercial fireworks and/or pyrotechnics demonstrations competently. There is no evidence that the Nightclub’s owners, agents or employees, or the Great White band complied with this law prior to using pyrotechnics at the Nightclub on February 20, 2003.

12. The Nightclub’s owners, agents and employees failed to manage, maintain, control, supervise and/or inspect the Nightclub and exits on the evening of February 20, 2003 prior to and during the Great White concert as required by **Rhode Island General Laws Section 23-28.6-2**.

13. The Nightclub’s owners, agents and employees failed to install, maintain, inspect and manage the Nightclub in a proper workmanlike fashion so that the emergency lighting and exit signs were operable in the event of fire and or power outage on the evening of February 20, 2003 as required by **Rhode Island General Laws Section 23-28.6-13**.


14. If requested to do so, I reserve the right to offer additional opinions in this litigation as may be needed in future.


JOHN M. HOFFMANN, P.E.D.

STATE OF MICHIGAN)
)
COUNTY OF Macomb)

SS:

SUBSCRIBED AND SWORN to before me by John M. Hoffmann on this 25
day of August, 2004.


Notary Public
State of Michigan

My Commission Expires: July 26, 2011

ROBIN L. OLOMUK
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES JUL 26, 2011
ACTING IN COUNTY OF Macomb



S A F E T Y E N G I N E E R I N G L A B O R A T O R I E S , I N C .

JOHN M. HOFFMANN, PH.D., C.S.P., P.E.

CURRICULUM VITAE

CONSULTING AND INVESTIGATIVE EXPERIENCE

Dr. Hoffmann has, over a twenty five year period, investigated and analyzed numerous fires, explosions and accidents. He has also participated in a wide variety of occupational safety and health program analyses. These investigations have included on-site evaluations, post investigation analysis and reconstruction, fire and chemical testing, technical advisory services and expert testimony. Expert testimony in depositions and trials has been given throughout the United States, Puerto Rico, and Canada. Assignments have included:

- LP gas fires and explosions
- Chemical fires and explosions
- Plastics fires
- Flammable and combustible liquid fires
- Occupational Safety and Health Programs
- Industrial, commercial, residential and vehicle fires and accidents
- Industrial, chemical and explosives safety programs
- Natural gas fires and explosions
- Structural fires

REPRESENTATIVE ACTIVITIES

FIRES AND EXPLOSIONS

SAN JUAN DUPONT HOTEL, PUERTO RICO

Developed fire reconstruction using computer modeling. Tested, monitored and evaluated testing of artifact materials. Provided scale model and video system which were used throughout the trial in Federal Court. Provided written reports and several days of trial testimony.

PEPCON AMMONIUM PERCHLORATE PLANT, NEVADA

Testified as a fire reconstruction and safety expert. Developed complete fire reconstruction of the event. Provided a broad array of scientific and litigation support services. Retained as an expert by both Plaintiffs and Defendants.



HILTON HOTEL FIRE, NEVADA

Evaluated flame spread testing related to carpeting used in various areas of this Las Vegas Hotel.

MGM GRAND FIRE, NEVADA

Reconstruction and evaluation of materials involved in the MGM Grand fire in Las Vegas. Evaluated fire spread patterns, smoke evolution and contribution of various materials to the fire growth process.

OTHER MAJOR FIRES AND EXPLOSIONS

British Columbia, Florida and Pennsylvania - Provided testing and evaluation of contribution to fire growth of PVC (Polyvinyl Chloride) insulated control and power cables in combination with other materials. Determined fire growth patterns from incipient stages. Established fire causes and origins. Developed reconstructions based on time analysis of burning and correlation of facts.

California, Georgia, Pennsylvania, Kentucky and Massachusetts - Provided fire reconstruction and evaluation of combustion properties of materials for major fires in high rise office buildings, warehouses and a hotel.

Provided fire reconstruction for electrical failure initiated fires in major industrial facilities in Pennsylvania, Georgia, North Carolina and British Columbia. Identified and isolated causes and developed growth and spread scenarios involving materials of construction and electrical energy contribution.

ACCIDENT INVESTIGATIONS

Investigated and reconstructed numerous accidents involving: vehicles, petrochemicals, and other flammable and combustible liquids; liquid propane gas; military armament, combustible dusts; various fabrics and materials and household appliances. These assignments took place in several different states and included industrial, commercial, marine and residential/domestic settings. Household appliances include hot water tanks, stoves, refrigerators, television sets, pressure cookers, and electric heaters.

OCCUPATIONAL SAFETY EXPERIENCE

Planned developed and implemented plant safety programs to reduce occupational injuries and provide for facilities and environmental protection. Implemented and maintained safety inspection and audit programs in a variety of manufacturing and warehouse facilities throughout the United States. Including chemicals, pharmaceutical and health care products. Developed and implemented plans to meet insurers requirements for safety program improvements including reductions in workers compensation costs.



SAFETY AUDITS AND PLANNING

Provided on-site audits of industrial/chemical/explosive safety programs and practices. Developed plans for upgrading safety programs to meet regulatory requirements. Coordinated implementation of upgrade plans. Fire and explosion litigation cases often involve evaluation of fire protection systems such as smoke detectors and sprinklers.

TESTING

Laboratory testing of fabrics and automobile interiors in accordance with Federal Standards. Routine laboratory work such as flash points, LP Gas sampling and analysis and ASTM flame spread and flammability tests have been utilized as have infrared, visible and ultraviolet spectrometers, elemental analysis, atomic absorption analysis and scanning electron microscope. Rates of heat and smoke release are also determined in the laboratory. Testing capability also includes full and large scale testing of products, materials and structures in both standard (ASTM) and non-standard scenarios.

TECHNOLOGY

In-house produced engineered graphics and animation, computer aided mathematical modeling, physical scale models of accident/disaster sites, aerial and still photography and laboratory testing design and experimentation were utilized in a variety of assignments. Video taping of accident recreations have been used in a number of instances including a hot water tank failure, a business fire and LP gas fires.

EDUCATION

- | | |
|--------|-----------------------------------------------------------------------------------------------|
| Ph.D. | - Organic Chemistry/Weapons System Engineering. Naval Postgraduate School, Monterey, CA, 1966 |
| B.S. | - Chemistry. Bucknell University, Lewisburg, PA, 1956 |
| C.S.P. | - Certified Safety Professional, by examination, 1979 |
| P.E. | - Registered Professional Safety Engineer Massachusetts |



PROFESSIONAL ORGANIZATIONS

Board of Certified Safety
Professionals

American Chemical
Society

American Chemical Society -
Chemical Health and Safety
Division

National Fire Protection
Association

American Society of Safety
Engineers, Professional
Member

National Safety Council -
Chemical Section,
Industrial Division

PROFESSIONAL ORGANIZATION ACTIVITIES/COMMITTEES

OSHA National Steering Committee - Evaluation of Contractor Safety in the Petrochemical Industry, 1989-1991.

NFPA - Hazardous Chemical Committee 1991 - Present.

National Safety Council - Chemical Section Executive Committee, 1980-Present; Industrial Section Technical Committee, 1983-85.

American Chemical Society Division of Chemical Health and Safety - Exhibition/Symposia Committee for Chemical Safety Education; Joint with National Safety Council, 1983-84.

Board of Certified Safety Professionals - Examination Question Reviewer, 1981-83.

American Society of Safety Engineers - Instructor, Systems Safety Review Classes for Certification Examinations, 1981-1982.

Adjunct Professor - Department of Occupational Safety and Health - Oakland University, Rochester, Michigan.

PROFESSIONAL EMPLOYMENT EXPERIENCE

1985- Safety Engineering Laboratories, Inc. Provides consulting, technological, testing, and litigation support services to clients in a variety of businesses, industries and litigation related matters.



1978-85 Consultant in Fire, Explosion and Accident Reconstruction. Expert advisory services and technical reconstructions of fires and explosions were conducted for a number of different clients in industrial settings and major hotel fires.

1983-85 Director of Manufacturing Engineering and Plant Manager, Parke-Davis Division, Warner Lambert Company. Responsible for Capital Plan Development and implementation, construction of new facilities and installation of new equipment. Managed a major new, state-of-the-art pharmaceutical manufacturing plant.

1979-83 Director of Safety, Parke-Davis Division, Warner Lambert Company. Responsible for planning, developing and implementing occupational safety and health programs and plant safety activities. Conducted process reviews and accident investigations. Involved four plants in three states and consultation to other locations and divisions.

1978-79 Safety Engineer, Parke-Davis Division, Warner Lambert Company. Responsible for plant safety programs, chemical process safety, occupational safety and industrial hygiene programs in a large, specialized chemical plant.

1974-78 Associate Chairman and Chairman, Chemistry Department, United States Naval Academy, Annapolis, MD. Responsible for curriculum review and updating, instruction of midshipmen and overall direction and management of the department. Prepared and implemented laboratory safety program.

1975-78 Consulting Associate, Safety Engineering Department, Trident Engineering Company, Annapolis, Maryland. Consulted for various clients in the areas of fire technology and fire reconstruction, combustion of plastics and their contribution to fires and fire spread, chemical and industrial safety. Expert witness testimony was given in a number of state and federal courts.

1971-74 Production Manager, Naval Air Rework Facility, San Diego, California. Managed a 6,000 man military/civilian work force in the repair and updating of naval aircraft and equipment. Involved management of a multitude of specialized staff skills, equipment and facilities.

1968-70 Program Manager, Aircraft and Ship Vulnerability/Survivability Tests and Studies, Naval Weapons Center, China Lake, California. Designed and conducted a research program to characterize and optimize conventional explosive warheads for ship attack missiles. A total of 63 full scale tests were conducted against target ships. Various damage aspects and mechanisms were evaluated including blast, fragment, fire and fire spread. Participated in the design and development of a program assessing the vulnerability and survivability of attack aircraft from fire and explosion damage. Investigated accidents involving laboratory and field trials of small rocket assemblies and component parts.



PUBLICATIONS

Hoffmann, J.M., Hoffmann, D.J., Kroll, E.C., Kroll, M.J., "Full Scale Burn Tests of Television Sets and Electronic Appliances," Fire Technology, 39, 207-224, 2003.

Hoffmann, J.M., Hoffmann, D.J., Kroll, E.C., Kroll, M.J., Fowler, J.R., Logan, L.M., "Effectiveness of Gas Fired Water Heater Elevation in the Reduction of Ignition of Vapors from Flammable Liquid Spills," Fire Technology, 39, 119-132, 2003.

Hoffmann, J.M., Hoffmann, D.J., Kroll, E.C., Wallace, J., Kroll, M.J., "Electrical Power Cord Damage From Radiant Heat And Fire Exposure," Fire Technology 37(2), 2001.

Hirschler, M.M., Hoffmann, D.J., Hoffmann, J.M., Kelley, Lester and Kroll, Michael. 1996 "Tests of the Protective Effect of Clothing in Apparel Fires." J. of Fire Sciences, Vol. 14 March/April, p. 104-123.

Hoffmann, J.M., "Chemical Hazards in the Work Place" by Ronald M. Scott, 1989; reviewed in Professional Safety 36(1), January 1991.

Hoffmann, J.M., "The Need for Complete Process Safety Studies: A Case Study". A presentation made at the National Safety Congress & Exposition, Las Vegas, Nevada, October 28-November 1, 1990.

Hoffmann, J.M. and Hoffmann, D.J., "Dispersion Modeling", Industrial Safety & Hygiene 23(13), p. 15, December 1989.

Hoffmann, J.M., "An Introduction to Fire Dynamics" by Dougal Drysdale, 1985; reviewed in Professional Safety 33(6), June 1988.

Hoffmann, J.M., "Fire and Flammability Handbook" by Neil Schultz, 1985; reviewed in Professional Safety 33(6), June 1988.

Hoffmann, J.M., "Computer Models in Hazard Analysis". A presentation made at the National Safety Congress & Exposition, Orlando, Florida, October 16-20, 1988.

Hoffmann, J.M., "Risk Analysis for Chemical Hazards", modeling of fires and explosions using integrated computer models. A presentation made at the National Safety Congress & Exposition, Chicago, Illinois, October, 1987.

Hoffmann, J.M., "Chemical Process Hazard Review", American Chemical Society Symposium Series 274, Washington D.C., 1985, p. 1-6.



Hoffmann, J.M., and Maser, D., Editors, "Chemical Process Hazard Review". American Chemical Society Symposium Series 274, Washington D.C., 1985.

Hoffmann, J.M., Graham, K.J. and Rowell, C.F., "Photolytic Ring Cleavage of 1,2-diarylcyclopropanes in a Non-Polar Solvent", Journal of Organic Chemistry, 40, 3005, 1975.

Hoffmann, J.M., Lockwood, D. and Alden, E., "Detonations of Polygon, MK-19 Bull Pup A and Fuel/Air Explosive Warheads on ex-Loeser (DE-680)", Naval Weapons Center IDP 3238-88404, 1971.

Hoffmann, J.M., et al, "Detonations in the ex-Barton (DD-722) of a MK-19 Bull Pup and Experimental Polygon Warhead", Naval Weapons Center IDP 3203-87315, 1970.

Hoffmann, J.M., et al, "Detonations of Condor, Standard Arm, and Nav Ord Experimental Warheads in ex-Bryant (DD-665)", Naval Weapons Center IDP 3097-83944, 1970.

Hoffmann, J.M., Lockwood, D. and Alden, E., "Detonations of Bull Pup MK-19 and Experimental Linear Shaped Charges in ex-Bull (DE-402)", Naval Weapons Center IDP 3073-83942, 1970.

Hoffmann, J.M., et al, "Detonations in ex-Day (DE-225) of Sparrow MK-38 and Experimental Shaped Charge Warheads", Naval Weapons Center IDP 3011-83940, 1969.

Hoffmann, J.M., Lockwood, D. and Alden, E., "Detonations in ex-Robert Brazier (DE-345) of Standard Arm MK-73 and Experimental AIM-7F Blast Configured Warhead", Naval Weapons Center IDP 2977-83943, 1969.

Hoffmann, J.M., Lockwood, D. and Alden, E., "Detonations in ex-Richey (DE-385) of Talos MK-46 and Experimental Linear Shaped Charge Warheads", Naval Weapons Center IDP 3044-83941, 1969.

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GRAY CERTIFICATION

I hereby certify that on the 27th day of August, 2004, a true copy of the within was mailed to:

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